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In re Application of YATA et al :
U.S. Application No.: 09/700,988 :
Int. Application No.: PCT/JP99/02658 :
Int. Filing Date: 20 May 1999 :
Priority Date: 20 May 1998 :
Attorney Docket No.: SAEGU64.001APC :
For: NONAQUEOUS SECONDARY CELL AND :
METHOD FOR CONTROLLING THE SAME :

DECISION

This is in response to applicant's "Petition to Withdraw Holding of Abandonment Under 37 CFR 1.181(a)" filed 06 December 2002.

BACKGROUND

On 20 May 1999, applicant filed international application PCT/JP99/02658, which claimed priority of an earlier Japan application filed 20 May 1998. A copy of the international application was communicated to the USPTO from the International Bureau on 25 November 1999. A Demand for international preliminary examination, in which the United States was elected, was filed on 25 October 1999, prior to the expiration of nineteen months from the priority date. Accordingly, the thirty-month period for paying the basic national fee in the United States expired at midnight on 20 November 2000.

On 20 November 2000, applicant filed national stage papers in the United States Designated/Elected Office (DO/EO/US). The submission was accompanied by, inter alia, the basic national fee required by 35 U.S.C. 371(c)(1).

On 03 January 2001, the DO/EO/US mailed a Notification of Missing Requirements Under 35 U.S.C. 371 (Form PCT/DO/EO/905), which indicated that an oath or declaration in compliance with 37 CFR 1.497 must be filed.

On 05 February 2001, applicant purportedly filed an executed declaration.

On 14 November 2002, the DO/EO/US mailed a Notification of Abandonment (Form PCT/DO/EO/909), which indicated that the present application is abandoned as to the United States for failure to timely respond to the Notification of Missing Requirements.

On 06 December 2002, applicant filed the present petition under 37 CFR 1.181 along with a copy of the declaration purportedly filed on 05 February 2001 and a copy of a return postcard receipt.

DISCUSSION

The evidence of record is sufficient to establish that the declaration was originally filed on 05 February 2001. Specifically, the copy of the return postcard, which includes a "Decl. and Power of Atty. w/ attachment" in its itemized contents and which bears a USPTO date stamp of 05 February 2001, serves as *prima facie* evidence that the declaration was received by the USPTO on 05 February 2001.

CONCLUSION

For the reasons above, the petition under 37 CFR 1.181 is GRANTED.

The Notification of Abandonment (Form PCT/DO/EO/909) mailed 14 November 2002 is hereby VACATED.

The application has an International Filing Date under 35 U.S.C. 363 of 20 May 1999 and a date under 35 U.S.C. 371(c) of 05 February 2001.

This application is being forwarded to the United States Designated/Elected Office (DO/EO/US) for further processing in accordance with this decision.



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